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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

314-700

No. 797

STATE OF MISSOURI AND ROY McKITTRICK, AS ATTORNEY GENERAL OF MISSOURI, *Petitioners*,

vs.

ST. LOUIS UNION TRUST COMPANY, TRUSTEE UNDER INDENTURE OF TRUST MADE FEBRUARY 14, 1921, BY MADGE BARNEY BLAKE,

ST. LOUIS UNION TRUST COMPANY, TRUSTEE UNDER INDENTURE OF TRUST MADE JANUARY 11, 1929, BY MADGE BARNEY BLAKE,

ST. LOUIS UNION TRUST COMPANY, CHARLES B. MALOY AND CLARENCE E. MALOY, TRUSTEES UNDER INDENTURE OF TRUST MADE MAY 20, 1935, BY MADGE BARNEY BLAKE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

ROY McKITTRICK,
Attorney General of Missouri,

WILLIAM C. CONNETT, IV,
Assistant Attorney General of Missouri,

RUSSELL C. STONE,
Assistant Attorney General of Missouri,

Counsel for Petitioners.

INDEX.

SUBJECT INDEX.

		Page
Petition for writ of certiorari		1
Summary statement of the matter involved		2
Reasons relied on for the allowance of the writ		6
Prayer for the writ		7
Brief in support of petition for writ of certiorari		9
I.	The opinion of the court below	9
II.	Jurisdiction	10
III.	Statement of the case	12
IV.	Specification of errors	14
V.	Argument	15
	Summary of argument	15
	Point A. The decision and judgment by the Supreme Court of the State of Missouri in the case sought to be reviewed is contrary to the requirments of Section 1 of the 14th Amendment to the Constitution of the United States, and is in conflict with prior decisions of this Court construing such Amendment, in that, whenever a state resorts to a classification of subjects, for the purposes of taxation, such classification must be reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the subject of the legislation, so that all persons similarly circumstanced shall be treated alike	15
	Point B. The Missouri Statute, Section 576 of the Revised Statutes of Missouri, 1929, denies to the citizens of the several states, which states have not enacted a	

Page

transfer tax or death tax of any character in respect of residents of Missouri, or a similar reciprocal exemption statute, equal protection of the Laws of the State of Missouri, so that all members of the class subject to taxation will not be treated equally 18

Conclusion 26

Appendix setting out what is now the Revised Statutes of Missouri, 1939, Chapter 1, Article 21, Sections 571 to 604, as amended by Laws of Missouri, 1941, pp. 280 and 281, and Section 576 of the Revised Statutes of Missouri, 1929, Laws of Missouri, 1939, p. 182, ... 27

TABLE OF AUTHORITIES.

CASES CITED.

Baldwin et al. v. *Missouri* (1930), 281 U. S. 586, 74 L. Ed. 1056, 50 S. Ct. 436 20

Blackstone v. *Miller* (1903), 188 U. S. 189, 47 L. Ed. 439, 23 S. Ct. 277 ..... 7, 19

Blodgett v. *Silberman, et al.* (1928), 277 U. S. 1, 72 L. Ed. 749, 48 S. Ct. 410 12

Boynton v. Hutchinson Gas Co. (1934), 291 U. S. 656, 78 L. Ed. 1048, 54 S. Ct. 457 12

Bullen v. *Wisconsin* (1916), 240 U. S. 625, 60 L. Ed. 830, 36 S. Ct. 473 24

Carmichael et al. v. *Southern Coal & Coke Co.* (1937), 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868 ... 5, 7, 11, 17

Caskey Baking Co., Inc. v. *Commonwealth of Virginia* (1941), 313 U. S. 117, 85 L. Ed. (Adv. Ops.) 831, 61 S. Ct. 881 ..... 5, 11

Coleman et al. v. *Miller, et al.* (1939), 307 U. S. 433, 83 L. Ed. 1385, 59 S. Ct. 972 12

Colgate v. *Harvey* (1935), 296 U. S. 404, 80 L. Ed. 299, 56 S. Ct. 252 ..... 7, 24

Commonwealth of Massachusetts v. *State of Mo., et al.* (1939), 308 U. S. 1, 84 L. Ed. 3, 60 S. Ct. 39 4

Page

Connolly v. *Union Sewer Pipe Co.* (1902), 184 U. S. 540, 46 L. Ed. 679, 22 S. Ct. 431 ..... 5, 11
Curry v. *McCanless* (1939), 307 U. S. 357, 83 L. Ed. 1339, 59 S. Ct. 900 ..... 7, 20
Farmers Loan & Trust Co. v. *Minnesota* (1930), 280 U. S. 204, 74 L. Ed. 371, 50 S. Ct. 98 ..... 19, 20
First Nat'l Bank of Boston v. *Maine* (1932), 284 U. S. 312, 76 L. Ed. 313, 52 S. Ct. 174 20
Graves v. *Elliott* (1939), 307 U. S. 383, 83 L. Ed. 1356, 59 S. Ct. 913 ..... 7, 20, 24
In re: Kansas City Star Co. (1940), 346 Mo. 658, 142 S. W. (2d) 1029 23
In re: Rosing's Estate (1935), 337 Mo. 544, 85 S. W. (2d) 495 ..... 3, 18, 21, 23, 24
Kelly v. *Washington ex rel. Foss Co., Inc.* (1937), 302 U. S. 1, 82 L. Ed. 3, 58 S. Ct. 87 12
Kidd v. *Alabama* (1903), 188 U. S. 730, 47 L. Ed. 669, 23 S. Ct. 401 20
Mager v. *Grima, et al.* (1850), 49 U. S. 490, 12 L. Ed. 1168 16
Magoun v. *Illinois Trust & Savings Bank, et al.* (1898), 170 U. S. 283, 42 L. Ed. 1037, 18 S. Ct. 594 ..... 7, 16, 18
Maxwell v. *Bugbee* (1919), 250 U. S. 525, 63 L. Ed. 1124, 40 S. Ct. 2 ..... 7, 23, 26
Old Dearborn Distributing Co. v. *Seagram-Distillers* (1936), 299 U. S. 183, 81 L. Ed. 109, 57 S. Ct. 139 7
People of State of California v. *Thompson* (1941), 312 U. S. 672, 61 S. Ct. 711, 85 L. Ed. (Adv. Ops.) 793 12
Rhode Island Hospital Trust Co. v. *Doughton* (1926), 270 U. S. 69, 70 L. Ed. 475, 46 S. Ct. 256 24
Snyder v. *Bettman* (1903), 190 U. S. 249, 47 L. Ed. 1035, 23 S. Ct. 803 24
State of Alabama v. *King and Boozer* (not as yet officially reported) (1941), 86 L. Ed. (Adv. Ops.) 1, 62 S. Ct. 43 12
State of Wisconsin v. *J. C. Penny Co.* (1940), 311 U. S. 435, 85 L. Ed. (Adv. Ops.) 222, 61 S. Ct. 246 ..... 12, 22
Stebbins v. *Riley* (1925), 268 U. S. 137, 69 L. Ed. 884, 45 S. Ct. 421 ..... 7, 16, 17, 18, 26
Travis v. Yale & Towne Manufacturing Company (1920) 252 U. S. 60, 64 L. Ed. 460, 40 S. Ct. 228 ..... 7, 26
Watson v. *State Comptroller of New York* (1920), 254 U. S. 122, 65 L. Ed. 170, 41 S. Ct. 43 ..... 7, 16, 18

Page

STATUTES CITED.

Section 570 of the Revised Statutes of Missouri, 1929 3
Section 571 of the Revised Statutes of Missouri, 1939 3
Laws of Missouri, 1931, page 130 3
Laws of Missouri, 1941, pages 280 and 281 3
Section 576 of the Revised Statutes of Missouri, 1929 5
Laws of Missouri, 1939, page 182 6
Section 237b of the Federal Judicial Code (28 U. S. C. A. 344 (b)) 10
Section 598 of the Revised Statutes of Missouri, 1929 12
Section 578 of the Revised Statutes of Missouri, 1939 21
Section 593 of the Revised Statutes of Missouri, 1939 21
Section 598 of the Revised Statutes of Missouri, 1939 21
Section 573 of the Revised Statutes of Missouri, 1939 14
Section 604 of the Revised Statutes of Missouri, 1939 30

CONSTITUTIONAL PROVISIONS.

Section 1 of the 14th Amendment of the Constitution of the United States ..

RULES OF COURT.

Rule 38 of the rules of this Court, Par. 5 10

TEXTS CITED.

28 Columbia Law Review 806 20
43 Harvard Law Review 641 20
18 Boston University Law Review 39 20

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PETITION FOR WRIT OF CERTIORARI.

May it Please the Court:

The petition of State of Missouri and Roy McKittrick, as Attorney General of the State of Missouri, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

This petition is filed to obtain a review of a final judgment of the Supreme Court of the State of Missouri dated October 30, 1941, opinion filed July 21, 1941 (R. 115), in the case of St. Louis Union Trust Company et al. v. State of Missouri (not as yet officially reported), 155 S. W. (2d) 107, Motion for Rehearing overruled October 30, 1941 (R. 139), holding that the State of Missouri did not have a lien on the assets of the trust estates created by the late Madge Barney Blake, a resident of the Commonwealth of Massachusetts, for inheritance taxes in the sum of $182,349.69 (R. c). The judgment of the Supreme Court of Missouri reversed the judgment of the Circuit Court of the City of St. Louis, Missouri, dated December 12, 1940 (R. b, 126).

On November 8, 1939, the St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy filed a petition in the Circuit Court of the City of St. Louis, Missouri, for the purpose of denying the claim of lien of the State of Missouri on the assets of the trust estates created by Madge Barney Blake (R. 2, 12). In substance, it was alleged that Madge Barney Blake was domiciled in the State of Massachusetts, and died on July 12, 1935 (R. 7). While domiciled in Massachusetts, the decedent created and established three trusts dated February 14, 1921, January 11, 1929, May 20, 1935, within the State of Missouri with the St. Louis Union Trust Company and Clarence E. and Charles B. Maloy, consisting of securities having a value at the date of death of $1,850,789.77 (R. 7). The trusts dated February 14, 1921, and May 20, 1935, were revocable (R. 4, 5), while the one dated January 11, 1929, was irrevocable (R. 6). By the terms of the trust instruments, the settlor reserved the income from the assets of the trusts during her lifetime, and at her death, after setting apart certain funds for the benefit of named bene-

ficiaries, provided that the residue should be distributed amongst named charitable institutions (R. 3, 5, 6).

At the time of the death of Madge Barney Blake there was in effect in the State of Missouri an inheritance tax law contained in the Revised Statutes of Missouri, 1929, Chapter 1, Article 21, Sections 570 to 604, inclusive, as amended by Laws of Missouri, 1931, page 130, now contained in the Revised Statutes of Missouri, 1939, Chapter 1, Article 21, Sections 571 to 604, inclusive, as amended by Laws of Missouri, 1941, pp. 280, 281. Pertinent sections thereof are printed in Appendix to this petition, whereby and wherein, in substance and effect, the State of Missouri claims the right to impose a tax on the right of any individual to receive property, *In Re Rosing's Estate* (1935), 337 Mo. 544, 85 S. W. (2d) 495, when the transfer of any such property, real, personal or mixed, or any interest therein or income therefrom in trust or otherwise to persons not therein exempted, is made by a resident or by a non-resident of said state when such non-resident's property is within the state or within its jurisdiction by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death; when the transfer is made by a resident or by a non-resident when such non-resident's property is within the state or within its jurisdiction in trust or otherwise, and the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of or the income from the property or (2) the right to designate the persons who shall possess or enjoy the income of the property therefrom (R. 8).

Also, at the time of the death of Madge Barney Blake, there was contained in the inheritance tax law of the State of Missouri a reciprocity statute, designated Section 576, *supra*, repealed, Laws of Missouri, 1939 page 182, which section is printed in Appendix of this petition, wherein and whereby, in substance and effect, it was provided in respect of personal property, that the tax imposed by said article shall not be payable (a) if the transferor at the time of his

death was a resident of a state which at the time of his death did not impose a transfer tax or death tax of any character in respect of property of residents of this state or (b) if the laws of the state of the residence of the transferor at the time of his death contained a reciprocal exemption provision under which non-residents were exempt from transfer taxes or death taxes of every character in respect of personal property, provided the state of the residence of such non-resident allowed a similar exemption to the residents of the state of residence of such transferor (R. 10).

At the time of the death of Madge Barney Blake, there was in effect in the Commonwealth of Massachusetts no law which imposed a transfer tax or death tax of any character, in respect of intangible personal property of residents of the State of Missouri, and the Commonwealth of Massachusetts did not at said time impose any such transfer tax or death tax (R. 11).

The identical facts, presented in the case sought to be reviewed, were heretofore before this Court in the case of *Commonwealth of Massachusetts* v. *State of Missouri et al.* (1939), 308 U. S. 1, 84 L. Ed. 3, 60 S. Ct. 39. The question presented in that case was whether a controversy existed between two states, and between a state and citizens of another state. This Court ruled that none existed that was enforceable in the Court; and, that the Commonwealth of Massachusetts was not without a proper and adequate remedy; thereafter, a suit was instituted in the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri against the St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, as Trustees, under the trust indentures made by Madge Barney Blake, for the purpose of asserting inheritance taxes, and a judgment was rendered in favor of the Commonwealth of Massachusetts, in the aggregate sum of $85,050.00 (R. 89); thereafter, the amount of such judgment was duly satisfied (R. 39).

The facts involved in this case are not in dispute upon which the Supreme Court of the State of Missouri

based its decision and judgment and are set forth in the opinion of the Court (R. 116).

It was contended by the petitioners here in the trial of the case in the Circuit Court of the City of St. Louis, Missouri, that Section 576, *supra*, of the Revised Statutes of Missouri, 1929 was unconstitutional and void in that said statute violates Section 1 of the 14th Amendment to the Constitution of the United States. The Supreme Court of the State of Missouri in its opinion (R. 118) recognized that the defendant, one of the petitioners here, contended that Section 576, *supra*, was void because it worked to the denial of due process, and authorized non-uniformity of taxes upon the same class of subjects of taxation contrary to Section 1 of the 14th Amendment to the Federal Constitution, and held, that Section 576, *supra*, was not void on constitutional grounds. Such decision was based on the cases of *Connolly* v. *Union Sewer Pipe Co.*, (1902), 184 U. S. 540, 46 L. Ed. 679, 22 S. Ct. 431; *Carmichael et al.* v. *Southern Coal and Coke Co.*, (1937) 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868; *Caskey Baking Co., Inc.* v. *Commonwealth of Virginia* (1941) 313 U. S. 117, 85 L. Ed. (Adv. Ops.) 831, 61 S. Ct. 881. It is this decision and judgment of the Supreme Court of the State of Missouri that is sought to be reviewed.

The record, upon which this petition is here presented, is composed of the printed case as used in the Supreme Court in the State of Missouri, being pages number 1 to 114 of the record as certified to this Court, together with the opinion of the Supreme Court of Missouri and the proceedings therein comprising pages lettered a to e, numbered 115 to 140 of the record as certified to this Court.

B.

Reasons Relied on for the Allowance of the Writ.

1. The question presented is the constitutionality of Section 576 of the Revised Statutes of Missouri, 1929, Laws of Missouri, 1939, page 182. The facts with respect to the question presented are not in dispute, and are contained in the record made before the Supreme Court of Missouri. Since no issue as to the facts was raised or presented in the State Courts of Missouri, none now exists, or is here presented; likewise, no question has been raised, and none exists as to the correctness of the procedure.

The controversy at issue, involved in the proceedings in the State Courts, and decided by the Supreme Court of Missouri in rendering the judgment sought to be reviewed, is whether Section 576, *supra*, conflicts with the provisions of Section 1 of the 14th Amendment to the Constitution of the United States, in that said section authorizes non-uniformity of taxation, upon the same class of subjects. This is solely a federal question of law to be decided by the decisions of this Court, and petitioners contend that the decision and judgment of the Supreme Court of Missouri upon such question is erroneous, and should be reversed.

2. The petitioners contend that no decisions of this Court directly or indirectly hold that Section 576, *supra* herein referred to as the reciprocity provision of the Inheritance Tax Laws of the State of Missouri, supports or sustains the holding of the Supreme Court of the State of Missouri.

3. Petitioners further contend that, although the precise question involved has not been passed upon by this Court, the decision of the Supreme Court of Missouri, holding that Section 576, *supra*, is valid, as not contravening the provisions of Section 1 of the 14th Amendment to the Constitution of the United States, is not in accord with applicable decisions of this Court, and assign the same as error, for which said decision should be reviewed and reversed.

4. The matter at issue is of widespread public importance, because of the fact it affects the exercise of the taxing powers of the states. Moreover, this Court has apparently subscribed, in the cases of *Curry* v. *McCanless*, (1939) 307 U. S. 357, 83 L. Ed. 1339, 59 S. Ct. 900 and *Graves* v. *Elliott* (1939), 307 U. S. 383, 83 L. Ed. 1356, 59 S. Ct. 913, to the doctrine previously announced in the case of *Blackstone* v. *Miller* (1903), 188 U. S. 189, 47 L. Ed. 439, 23 S. Ct. 277, respecting the taxation of intangibles in more than one state.

5. The decision and judgment of the Supreme Court of Missouri sought to be reviewed is in direct conflict with previous decisions of this Court in the cases of *Stebbins* v. *Riley* (1925), 268 U. S. 137, 69 L. Ed. 884, 45 S. Ct. 424; *Magoun* v. *Illinois Trust and Savings Bank et al.*, (1898), 170 U. S. 283, 42 L. Ed. 1037, 18 S. Ct. 594; *Old Dearborn Distributing Co.* v. *Seagram-Distillers* (1936), 299 U. S. 183, 81 L. Ed. 109, 57 S. Ct. 139; *Watson* v. *State Comptroller of New York* (1920), 254 U. S. 122, 65 L. Ed. 170, 41 S. Ct. 43; *Carmichael* v. *Southern Coal and Coke Co.* (1937), 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868; *Maxwell* v. *Bugbee* (1919), 250 U. S. 525, 63 L. Ed. 1124, 40 S. Ct. 2; *Colgate* v. *Harvey* (1935) 296 U. S. 404, 80 L. Ed. 299, 56 S. Ct. 252; *Travis v. Yale & Towne Manufacturing Company* (1920) 252 U. S. 60, 64 L. Ed. 460, 40 S. Ct. 228. These decisions, while announcing the rule that the states are free to select their subjects of taxation and classify the same, nevertheless require, under the provisions of Section 1 of the 14th Amendment, that all members of the class be treated equally. Because the Supreme Court of Missouri has decided, by its opinion and judgment, that Section 576 of the Revised Statutes of Missouri, 1929 does not violate Section 1 of the 14th Amendment, its decision is in conflict with applicable decisions of this Court.

WHEREFORE, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Missouri, commanding that Court to certify and send to

this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 37563, May Term, 1941, *St. Louis Union Trust Company, et al., Appellants* v. *The State of Missouri*, and that the said judgment of the Supreme Court of Missouri may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

ROY MCKITTRICK,
Attorney General of Missouri,

WILLIAM C. CONNETT, IV,
Assistant Attorney General of Missouri

RUSSELL C. STONE,
Assistant Attorney General of Missouri

Counsel for Petitioners.